150 U 8249

150-249

(Vol 865 of Trs, not yet bound).

RECORD, CASE NO. 13846.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO. ~~236~~. 30

THE UNITED STATES, PLAINTIFF,

vs.

ROBERT S. RODGERS.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED OCTOBER 21, 1889.

RECORD, CASE NO. 13846.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO. 236.

THE UNITED STATES, PLAINTIFF,

vs.

ROBERT S. RODGERS.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

INDEX.

	Original.	Print.
Transcript from district court	1	1
Indictment	2	1
Capias	9	4
Marshal's return	10	5
Order remitting cause to circuit court	11	5
Clerk's certificate	12	6
Plea to jurisdiction	13	6
Demurrer to plea to jurisdiction	14	7
Recognizance	15	7
Certificate of division in opinion	17	8
Præcipe for transcript	20	10
Clerk's certificate	21	10

1 Transcript certified from the district court.

Pleas of the district court of the United States for the eastern district of Michigan, begun and held at the district court room in the city of Detroit, in said district, on the first Tuesday of November, in the year of our Lord one thousand eight hundred and eighty-seven.

Be it remembered that on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and eighty-eight, the grand jurors of the United States, empannelled and sworn to enquire in and for the body of the eastern district of Michigan, came into the said court and through their foreman, Joseph D. Yerkes, presented to the said court an indictment, which said indictment was then and there filed, and was and is in the words and figures following, to wit:

2 The United States of America. In the district court of the United States for the sixth circuit and eastern district of Michigan. Of the November in the year of our Lord one thousand eight hundred and eighty-seven.

EASTERN DISTRICT OF MICHIGAN, *ss:*

The grand jurors of the United States, empannelled and sworn to enquire in and for the body of the eastern district of Michigan, upon their oaths, present that heretofore, to wit: On the tenth day of August, in the year of our Lord one thousand eight hundred and eighty-seven, in the Detroit River, within the admiralty jurisdiction of the United States and out of the jurisdiction of any particular State of the United States, to wit, within the territorial limits of the Dominion of Canada and within the juri-diction of this honorable court, on board of the steamer Alaska, a vessel belonging to John Clark and Walter O. Ashley, citizens of the United States, John Gustave Beyers, and Joseph Coveyeau, and Thomas Mullin, and John Ryan, and Robert S. Rogers, and John Webber, and Martin Forbes, each late of Detroit, in said district, did wrongfully, unlawfully, violently, and wilfully, with dangerous weapons, to wit, with pistols, and bottles, and slung shots, and with a dangerous weapon commonly known as a billy, to wit, a weapon made of some hard metal, to these grand jurors unknown, which said metal was then an there inclosed in some covering, the nature of which covering is to these grand jurors unknown, which said dangerous weapon were then and there held
3 in the hands of said John Gustave Beyers, Joseph Coveyeau, Thomas Mullin, John Ryan, Robert Rogers, John Webber, and Martin Forbes, commit an assault on one James Downs, in the peace of the United States then and there being, and him, the said James Downs, did then and there, and with the dangerous weapon aforesaid, wrongfully and unlawfully beat, strike, wound and illtreat, contrary to the form, force, and effect of the act of Congress in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid upon their like oaths, do further present that heretofore, to wit: On the tenth day of August, in the year of our Lord, one thousand eight hundred and eighty-seven, in the Detroit River, within the admiralty jurisdiction of the United States, and out of the

jurisdiction of any particular State of the United States, to wit: Within the territorial limits of the Dominion of Canada, and within the jurisdiction of this honorable court, on board the steamer Alaska, a vessel belonging to John Clark and Walter O. Ashley, citizens of the United States, John Gustave Beyers, and Joseph Coveyeau, and Thomas Mullin, and John Ryan, and Robert S. Rogers, and John Webber, and Martin Forbes, each late of Detroit, in said district, did wrongfully, unlawfully, violently, and willfully commit an assault on one James Downs, and him, the said James Downs, did then and there willfully and unlawfully strike, and beat, and illtreat, with intent then and there to perpetrate a felony, to wit: With intent, him the said James Downs, then and there, feloniously,
4 willfully, and of their malice aforethought, to kill and murder, contrary to the form, force, and effect of the act of Congress made and provided, and against the peace and dignity of the United States.

Third. And the grand jurors aforesaid, upon their like oaths, do further present that, heretofore, to wit: On the tenth day of August in the year of our Lord one thousand eight hundred and eighty-seven, in the Detroit River, within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State of the United States, to wit: Within the territorial limits of the Dominion of Canada, and within the jurisdiction of this honorable court, on board of the steamer Alaska, a vessel belonging to John Clark and Walter O. Ashley, citizens of the United States, John Gustave Beyers, and Joseph Coveyeau, and Thomas Mullin, and John Ryan, and Robert S. Rogers, and John Webber, and Martin Forbes, each late of Detroit, in said district, with dangerous weapons, to wit: With a pistol, commonly known as a revolver, of large size and great weight, which they, the said John Gustave Beyers, and Joseph Coveyeau, and Thomas Mullin, and John Ryan, and Robert S. Rogers, and John Webber, and Martin Forbes, then and there held in their right hands, did, with force and arms, wrongfully, violently, and unlawfully commit an assault on one James Downs, in the peace of the United States then and there being, and him, the said James Downs, did then and there, and with the dangerous weapon aforesaid, strike, beat, and grievously wound, contrary to the form, force, and effect of the act of Congress in such case made and provided, and against the peace and dignity of the United States.

5 Fourth. And the grand jurors aforesaid, upon their like oaths, do further present that, heretofore, to wit: On the tenth day of August in the year of our Lord one thousand eight hundred and eighty-seven, in the Detroit River, within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State of the United States, to wit: Within the territorial limits of the Dominion of Canada, and within the jurisdiction of this honorable court, on board of the steamer Alaska, a vessel belonging to John Clark and Walter O. Ashley, citizens of the United States, John Gustave Beyers, and Joseph Coveyeau, and Thomas Mullin and John Ryan, and Robert S. Rogers, and John Webber, and Martin Forbes, each late of Detroit, in said district, did wrongfully, unlawfully, violently, and willfully, with dangerous weapons, to wit, with pistols and bottles and slung shots, and with a dangerous weapon, commonly known as a billy, to wit, a weapon made of some hard metal, to these grand jurors unknown, which said metal was then and there en-

closed in some covering, the nature of which covering is to these grand jurors unknown, which said dangerous weapons were then and there held in the hands of the said John Gustave Beyers, Joseph Coveyeau, Thomas Mullin, John Ryan, Robert Rogers, John Webber and Martin Forbes, commit an assault on James Downs, in the peace of the United States then and there being, and him, the said James Downs, did then and there and with the dangerous weapons aforesaid, wrongfully and unlawfully beat, strike, wound, and illtreat. And the said grand jurors do present, as aforesaid, that after the said assault the said John Gustave Beyers, and Joseph Coveyeau, and Thomas Mullin, and John Ryan, and Robert Rogers, and John Webber, and Martin Forbes were first found in
6 the city of Detroit, in said eastern district of Michigan, and that the said John Gustave Beyers, and Joseph Coveyeau, and Thomas Mullin, and John Ryan, and Robert Rogers, and John Webber, and Martin Forbes were, after the said assault, first brought into said district; and the said grand jurors do present, as aforesaid, that all of the acts of the said John Gustave Beyers, and Joseph Coveyeau, and Thomas Mullin, and John Ryan, and Robert Rogers, and John Webber, and Martin Forbes, set forth herein, were contrary to the form, force, and effect of the act of Congress in such case made and provided, and against the peace and dignity of the United States.

Fifth. And the grand jurors aforesaid, upon their like oaths do further present that, heretofore, to wit, on the tenth day of August in the year of our Lord one thousand eight hundred and eighty-seven, in the Detroit River, within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State of the United States, to wit, within the territorial limits of the Dominion of Canada, on board of the steamer Alaska, a vessel belonging to John Clark and Walter O. Ashley, citizens of the United States, John Gustave Beyers, and Joseph Coveyeau, and Thomas Mullin, and John Ryan, and Robert S. Rogers, and John Webber, and Martin Forbes, each late of Detroit, in said district, did wrongfully, unlawfully, violently, and willfully commit an assault on one James Downs, and him, the said James Downs, did then and there willfully and unlawfully strike and beat and ill treat, with intent then and there to perpetrate a felony, to wit: with intent, him, the said James Downs, then and there, feloniously, willfully, and of malice aforethought, to kill and
7 murder, and the said grand jurors do present, as aforesaid, that the said John Gustave Beyers, and Joseph Coveyeau, and Thomas Mullin, and John Ryan, and Robert S. Rogers, and John Webber, and Martin Forbes, remained on board said steamer Alaska, until said steamer arrived at the port of Detroit, in the eastern district of Michigan; and that the said steamer Alaska, and the said John Gustave Beyers, and Joseph Coveyeau, and Thomas Mullin, and John Ryan, and Robert S. Rogers, and John Webber, and Martin Forbes, remained out of the jurisdiction of any particular State and district of the United States, until said steamer and said John Gustave Beyers, and Joseph Coveyeau, and Thomas Mullin, and John Ryan, and Robert S. Rogers, and John Webber, and Martin Forbes, were brought into the said eastern district of Michigan; and that after the said assault, the said John Gustave Beyers, Joseph Coveyeau, Thomas Mullin, John Ryan, Robert S. Rogers, John Webber, and Martin Forbes were first brought into the said eastern district of Michigan and

within the jurisdiction of this honorable court; and the said grand jurors do present said aforesaid; that the assault made by the said John Gustave Beyers, and Joseph Coveyeau, and Thomas Mullin, and John Ryan, and Robert S. Rogers, and John Webber, and Martin Forbes, as above set forth, was contrary to the form, force, and effect of the act of Congress in such case made and provided, and against the peace and dignity of the United States.

Sixth. And the grand jurors aforesaid, upon their like oaths, do further present, that heretofore, to wit, on the tenth day of August in the year of our Lord one thousand eight hundred and eighty-seven, in the Detroit River, within the admiralty jurisdiction of the United States, and
8 out of the jurisdiction of any particular State of the United States, to wit, within the territorial limits of the Dominion of Canada, and within the jurisdiction of this honorable court, on board of the steamer Alaska, a vessel belonging to John Clark and Walter O. Ashley, citizens of the United States, John Gustave Beyers and Joseph Coveyeau and Thomas Mullin and John Ryan and Robert S. Rogers and John Webber and Martin Forbes, each late of Detroit, in said district, with dangerous weapons, to wit, with a pistol, commonly known as a revolver, of large size and great weight, which they, the said John Gustave Beyers and Joseph Coveyeau and Thomas Mullin and John Ryan and John Webber and Martin Forbes then and there held in their right hands, did, with force and arms, wrongfully, willfully, and unlawfully commit an assault on one James Downs, in the peace of the United States then and there being, and him, the said James Downs, did then and there, with the dangerous weapon aforesaid, strike, beat, and grievously wound, and the said grand jurors do present as aforesaid, that the said assault committed and made by the said John Gustave Beyers and Joseph Coveyeau and Thomas Mullin and John Ryan and Robert S. Rogers and John Webber and Martin Forbs was then and there committed and made on board the said steamer Alaska, out of the jurisdiction of any particular State and district of the United States, and that after the said assault the said John Gustave Beyers and Joseph Coveyeau and Thomas Mullin and John Ryan and Robert S. Rogers and John Webber and Martin Forbs were first found in the eastern district of Michigan, and that after the said assault the said John Gustave Beyers and Joseph Coveyeau and Thomas Mullin and John Ryan and Robert S. Rogers and John Webber and Martin Forbes did not go into any other district of the United States until they
9 were first brought into the eastern district of Michigan, within the jurisdiction of this honorable court; and that the said John Gustave and Joseph Coveyeau and Thomas Mullin and John Ryan and Robert S. Rogers and John Webber and Martin Forbes were brought into the district last aforesaid immediately after the said assault, and that all of said assaults set forth aforesaid was contrary to the form, force, and effect of the act of Congress in such case made and provided, and against the peace and dignity of the United States.

C. P. BLACK,
United States Attorney for the Eastern District of Michigan.

(Endorsed:) A true bill. (Signed) Joseph D. Yerkes, foreman. Exhibited and filed February 24, 1888. D. J. Davison, clerk.

Afterwards, on the 20th day of September, A. D. 1889, a capias for the arrest of Robert S. Rogers, one of the defendants named in said indictment, was issued out of and under the seal of said court; which said capias was afterwards, on Sept. 23, 1889, returned by the marshal of said district, with his doings thereon endorsed; which capias and return of the marshal is in the words and figures following, to wit:

The President of the United States of America
to the marshal of the eastern district of Michigan, greeting:

You are hereby commanded that you take Robert S. Rogers, if he shall be found in your district, and him safely keep, so that you may have his body in the district court of the United States of America for the
10 eastern district of Michigan, to be held at Detroit, in the said district, before the judge of the said court, forthwith to answer unto the United States of America upon an indictment which has been exhibited and filed by the grand jurors said district against him on a charge of having made an assault with a dangerous weapon in the Detroit River, &c., in violation of sect. 5346 of the Revised Statutes of the United States.

And have you then and there this writ:

Witness the honorable Henry B. Brown, judge of the district court of the United States for the eastern district of Michigan, this 20th day of September, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and fourteenth.

D. J. DAVISON,
Clerk.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the 20th day of September, 1889, in obedience to the within writ, I did arrest the within named Robert S. Rogers, at Detroit, in said district, and now have in my custody, awaiting the further order of the court.

G. PENNELL,
Marshal.
By C. H. MOORE,
Deputy.

Afterwards, at a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court room in the city of Detroit, in said district, on Friday, the twentieth day of September, in the year of our Lord one thou-
11 sand eight hundred and eighty-nine, an order was made and entered in said cause in the words and figures following, to wit:

THE UNITED STATES *vs.* ROBERT S. ROGERS, IMPLEADED WITH JOHN Gustave Bevers, Joseph Coveyeau, Thos. Mullin, John Ryan, John Webber, and Martin Forbes.	On indictment for assault with dangerous weapon, &c.

It satisfactorily appearing to the court now here that the district attorney of the United States for the eastern district of Michigan deems it nec-

essary that the indictment now pending in this court against the said Robert S. Rogers for assault with a dangerous weapon and for assault with intent to commit a felony should be remitted to the next session of the circuit court for the sixth circuit and eastern district of Michigan; and the court being also of the opinion that a difficult and important question of law is involved as to the jurisdiction of this court to consider said indictment, thereupon it is ordered that said indictment be remitted to said circuit court, and that the clerk of this court certify the same to said circuit court, together with all proceedings heretofore had herein.

12 The district court of the United States for the eastern district of Michigan.

THE UNITED STATES *vs.* ROBERT S. ROGERS, IMPLEADED WITH JOHN Gustave Beyers, Joseph Coveyeau, Thos. Mullin, John Ryan, John Webber, and Martin Forbes.	On indictment for assault with dangerous weapon, &c.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Darius J. Davison, clerk of the district court of the United States for said district, do hereby certify the above and foregoing to be a transcript of the record in the cause above entitled; that I have carefully compared the same with the original records and files of said cause in my office, and find the same to be true copies thereof and of the whole of said originals.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Detroit, in said district, this twentieth day of September, A. D. 1889.

[SEAL.] D. J. DAVISON, *Clerk.*

13 *Plea to jurisdiction.*

State of Michigan. The circuit court of the United States for the eastern district of Michigan.

THE PEOPLE *vs.* ROBERT S. RODGERS.	

And the said Robert S. Rodgers in his own proper person comes into court here; and having heard the said indictment read says that the said district court of the United States for the eastern district of Michigan aforesaid here ought not to take cognizance of the assault, &c., charged in the said indictment above specified; because protesting that he is not guilty of the same, nevertheless the said Robert S. Rodgers says that this court has no jurisdiction of the matters charged against defendant in said indictment as appears by the face of said indictment; and this he the said Robert S. Rodgers is ready to verify; wherefore he prays judgment if the said court now here will or ought to take cognizance of the indictment aforesaid and that by the court now here he may be dismissed and discharged.

ROBERT S. RODGERS.

14 *Demurrer to plea to jurisdiction.*

United States of America. The circuit court of the United States for the sixth circuit and eastern district of Michigan.

THE UNITED STATES *vs.* ROBERT S. RODGERS (INDICTED WITH JOHN Gustav Byers, Thomas Mullin, Joseph Coveyeau, John Ryan, John Webber, and Martin Forbes).	No. 3826.

Cyrenius P. Black, who now prosecutes for the said United States in this behalf, as to the plea of the said Robert S. Rogers, by him in this cause pleaded, saith that the same and the matters therein contained, in manner and form as the same are pleaded and set forth, are not sufficient in law to preclude the said United States from prosecuting the said indictment against him, the said Robert S. Rodgers, and the said United States is not bound by law to answer the same, and this the said Cyrenius P. Black, who prosecutes as aforesaid, is ready to verify; wherefore, for want of a sufficient plea in this behalf he, the said Cyrenius P. Black, for the said United States, prays judgment, and that the said indictment may be adjudged good, and that the said Robert S. Rodgers may further answer thereto.

Dated Detroit, 23rd September, A. D. 1889.

C. P. BLACK,
United States Attorney for the Eastern District of Michigan.

Filed September 23rd, 1889.

And thereupon, by joinder, issue was duly framed.

15 *Recognizance.*

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

Be it remembered that on the 23d day of September, in the year of our Lord one thousand eight hundred and eighty-nine, at Detroit, in said district, before me, Jno. Graves, a commissioner of the circuit court of the United States for the sixth circuit and eastern district of Michigan, duly appointed, and competent and qualified to take acknowledgments of bail, etc., in and for said eastern district of Michigan, personally appeared Robert S. Rogers, of Chicago, Illinois, in said district, and produced as surety William Dimen, of Detroit, Mich. And the said Robert S. Rogers and William Dimen acknowledged themselves to owe unto the United States of America the sum of five hundred dollars, good and lawful money of the United States, to be levied of their goods and chattels, lands, and tenements, if default be made in the condition following, to wit:

The condition of this recognizance is such that if the above bounden Robert S. Rogers shall be and appear in the circuit court of the United States for the eastern district of Michigan, at the court-house in Detroit, in said Eastern district, on Tuesday, the 5th day of November, anno

Domini one thousand eight hundred and eighty-nine, at ten o'clock forenoon of said day, and from day to day, and term to term thereafter, to answer to an indictment which has been exhibited and filed in said court by the grand jurors of the United States for the body of the eastern district of Michigan, against said Rogers impleaded with others, charging him with committing an assault with a dangerous weapon on one
16 Downs on the Detroit River on board the steamer Alaska, on August 10th, 1887, and abide such order and determination as said court may make concerning him on said indictment, and shall not depart said court without leave thereof, then the above obligation to be void, otherwise to abide and remain in full force and effect.

ROB'T S. RODGERS.
WILLIAM DIMEN.

Taken, subscribed, and acknowledged before me, this 23d day of September, A. D. 1889.

JNO. GRAVES,
U. S. Commissioner, Circuit Court of the United States for the Sixth Circuit and Eastern District of Michigan.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Before me, Jno. Graves, a commissioner appointed by the circuit court of the United States for the eastern district of Michigan, personally appeared this day William Dimen, who, being first duly sworn, does depose that he is a resident and freeholder of the eastern district of Michigan; that he is worth the sum of three thousand dollars after his debts are paid; that he is seized, in his own right, of real estate in the district aforesaid, whose actual and present cash value, free and clear of all incumbrances whatever, amounts to three thousand dollars; and that the real estate hereinbefore referred to by him is situated in Detroit, Mich., and described as situated at 350 Woodbridge st., east.

WILLIAM DIMEN.

Sworn and subscribed before me, this 23d day of September, A. D. 1889.

JNO. GRAVES,
U. S. Commissioner for Eastern District of Michigan.

17 *Certificate of division of opinion.*

United States of America. The circuit court of the United States for the sixth circuit and eastern district of Michigan.

THE UNITED STATES }
vs.
ROBERT S. RODGERS. }

The defendant in this cause was indicted on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and eighty-eight, in the district court of the United States for the eastern district of Michigan, together with John Gustave Bevers and others, charged, under section 5346 of the Revised Statutes of the United States, with having made

an assault with dangerous weapons upon one James Downs, the assault having taken place on the steamer Alaska, a vessel owned by citizens of the United States, while such vessel was in the Detroit River, out of the jurisdiction of any particular State of the United States, and within the territorial limits of the Dominion of Canada, and the said Robert S. Rodgers, and the others indicted with him, having first, after the assault, come into the United States in the eastern district of Michigan.

On the twentieth day of September, in the year of our Lord one thousand eight hundred and eighty-nine, the defendant Rodgers was arrested, and on the same day the indictment was, on motion of the United States attorney for the eastern district of Michigan, and by order of the district court for such district, remitted to the circuit court for such district, and with all proceedings theretofore taken certified to such circuit court.

On the twenty-third day of September, in the year of our Lord one thousand eight hundred and eighty-nine, the defendant on being called
18 upon to plead in the circuit court of the United States for the eastern district of Michigan, by permission of the court pleaded in abatement to the jurisdiction of the court, claiming that under section 5346 of the Revised Statutes of the United States the courts of the United States have no jurisdiction of offenses committed in the Detroit River on a vessel of the United States within the territorial limits of the Dominion of Canada.

The United States by C. P. Black, United States attorney, and Charles T. Wilkins, assistant United States attorney, for the eastern district of Michigan, demurred to such plea, and the defendant joined on demurrer.

The matter of the plea of the jurisdiction coming on to be heard in the circuit court of the United States for the eastern district of Michigan, on the third day of October in the year of our Lord one thousand eight hundred and eighty-nine before the circuit and district judges, and the defendant being present in court, the said circuit and district judges were divided in opinion on the question:

Whether the courts of the United States have jurisdiction under section 5346 of the Revised Statutes of the United States, to try a person for an assault, with a dangerous weapon, committed on a vessel belonging to a citizen of the United States, when such vessel is in the Detroit River, out of the jurisdiction of any particular State, and within the territorial limits of the Dominion of Canada.

19 And so, at the request of the defendant and of the United States attorney for this district, the circuit and district judges do hereby at the same term state this point upon which they disagree, and do hereby direct the same to be certified under the seal of the circuit court of the United States for the eastern district of Michigan to the Supreme Court of the United States at its next session, for its opinion thereon.

HOWELL E. JACKSON,
Circuit Judge.

HENRY B. BROWN,
District Judge.

20 Circuit court of the United States for the eastern district of Michigan.

THE UNITED STATES }
vs.
ROBERT S. RODGERS. }

SIR: Please make and file, as soon as possible, a transcript of record in the above-entitled cause, in the Supreme Court.

Yours, &c.,

C. P. BLACK,
United States Attorney.

To WALTER S. HARSHA,
Clerk U. S. Circuit Court.
DETROIT, *Sept. 30th*, 1889.

21 United States of America. Circuit court of the United States for the eastern district of Michigan.

THE UNITED STATES }
vs.
ROBERT S. RODGERS. }

I, Walter S. Harsha, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify and return to the certificate of division of opinion filed by the judges in the above-entitled cause that the above and foregoing is a true copy of the record and proceedings of said court in said cause; that I have compared the same with the original and it is a true transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Detroit in said district this 30th day of September, in the year one thousand eight hundred and eighty-nine, and of the Independence of the United States of America the one hundred and fourteenth.

[SEAL.] WALTER S. HARSHA,
Clerk.

(Indorsement on cover:) No. 236, The United States, plaintiff, vs. Robert S. Rodgers. E. Michigan C. C. U. S., 13846. Filed October 21, 1889. Supreme Court U. S. Clerk's Office. Received Oct. 21, 1889.

Office Supreme Court U. S.
FILED.
APR 26 1893
JAMES H. McKENNEY,
CLERK.

150-249

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, PLAINTIFF,
vs.
ROBERT S. RODGERS. } No. 236.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

BRIEF FOR THE UNITED STATES.

A. X. PARKER,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, PLAINTIFF,
vs.
ROBERT S. RODGERS. } No. 236.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This case comes up on a certificate of division and presents the question whether section 5346 of the Revised Statutes covers and includes an offense committed in waters outside of the territorial limits of the United States, to wit, in waters within the territorial limits of the Dominion of Canada.

The indictment under examination was filed February 24, 1888, in the district court of the United States for the eastern district of Michigan.

The indictment contains six counts.

It is charged in the *first count* that:

> On the 10th day of August, 1887, in the Detroit River, within the admiralty jurisdiction of the United States and out of the jurisdiction of any particular State of the United States, to wit, within the territorial limits of the Dominion of Canada and within the jurisdiction of this honorable court, on board of the steamer *Alaska*, a vessel belonging to John Clark and Walter O. Ashley, citizens of the United States, John Gustave Beyers, * * * and Robert S. Rogers, * * * and * * * each late of Detroit, in said district, did wrongfully, unlawfully, violently, and willfully, with dangerous weapons, to wit, with pistols, and bottles, and slung shots, and with a dangerous weapon commonly known as a billy, * * * then and there held in the hands of said John Gustave Beyers * * * Robert Rogers, * * * commit an assault on one James Downs, in the peace of the United States then and there being, and him, the said James Downs, did then and there, and with the dangerous weapon aforesaid, wrongfully and unlawfully beat, strike, wound, and ill-treat, contrary to the form, force, and effect of the act of Congress in such case made and provided, and against the peace and dignity of the United States.

In the *second count* the assault is charged as having been made on the steamer as before described, and by the same persons and in the same territorial locality, but with intent, feloniously, willfully, and with malice aforethought, to kill and murder the said Downs.

In the *third count* the assault is charged as having been made on the vessel and in the same territorial locality, and with a pistol, commonly known as a revolver, of large size and great weight, a dangerous weapon, etc.

In the *fourth count* the commission of the offense is set forth substantially as in count number one, and it is added that said Robert Rogers (and other defendants, naming them in order)—

> * * * were first found in the city of Detroit, in said eastern district of Michigan, and that the said John Gustave Beyers * * * and Robert Rogers * * * were, after the said assault, first brought into said district, and so forth.

In the *fifth count* the assault is charged as having been committed upon the said Downs, on said vessel, in the same territorial locality, as before set forth, "and with intent to perpetrate a felony, to wit, with intent, him, the said James Downs, then and there, feloniously, willfully, and of malice aforethought, to kill and murder."

And the grand jurors present—

> That the said * * * Robert S. Rogers * * * remained on board said steamer *Alaska* until said steamer arrived at the port of Detroit, in the eastern district of Michigan; and that the said steamer *Alaska* and the said * * * Robert S. Rogers * * * remained out of the jurisdiction of any particular State and district of the United States until said steamer and said * * * Robert S. Rogers * * * were brought into said eastern district of Michigan; and that after the said assault the said John Gustave Beyers, * * * Robert S. Rogers, * * * and Martin Forbes

were first brought into the said eastern district of Michigan and within the jurisdiction of this honorable court, and so forth.

In the *sixth count* the assault is charged as having been committed territorially, as before set forth, and by means of a pistol or revolver of large size and great weight, substantially as is stated in the third count.

It is alleged that the offense was committed:

> on board the steamer *Alaska*, out of the jurisdiction of any particular State and district of the United States, and that after the said assault the said John Gustave Beyers * * * and Robert S. Rogers * * * were first found in the eastern district of Michigan,

and that after said assault they—

> *did not go into any other district of the United States until they were first brought into the eastern district of Michigan, within the jurisdiction of this honorable court;*

and that they

> *were brought into the district last aforesaid immediately after said assault.*

The capias issued (p. 5) commands the marshal to "take Robert S. Rogers, if he shall be found in your district, and him safely keep," &c.

The marshal's return (p. 5) shows the arrest of said Robert S. Rogers at Detroit, in said district, September 20, 1889.

Immediately afterwards the indictment and proceedings were duly remitted to the circuit court for the sixth circuit and eastern district of Michigan.

The defendant filed the following plea:

Plea to jurisdiction.

State of Michigan. The circuit court of the United States for the eastern district of Michigan.

THE PEOPLE
vs.
ROBERT S. RODGERS.

And the said Robert S. Rodgers in his own proper person comes into court here, and having heard the said indictment read, says that the said district court of the United States for the eastern district of Michigan aforesaid here ought not to take cognizance of the assault, etc., charged in the said indictment above specified, because, protesting that he is not guilty of the same, nevertheless, the said Robert S. Rodgers says that this court has no jurisdiction of the matters charged against defendant in said indictment as appears by the face of said indictment; and this he, the said Robert S. Rodgers, is ready to verify. Wherefore he prays judgment if the said court now here will or ought to take cognizance of the indictment aforesaid, and that by the court now here he may be dismissed and discharged.

ROBERT S. RODGERS.

Demurrer to the plea of jurisdiction was duly filed, and the prisoner was discharged upon recognizance given with sureties.

The certificate upon which the case comes up is as follows (pp. 8, 9):

Certificate of division of opinion.

United States of America. The circuit court of the United States for the sixth circuit and eastern district of Michigan.

THE UNITED STATES
vs.
ROBERT S. RODGERS.

The defendant in this cause was indicted on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and eighty-eight, in the district court of the United States for the eastern district of Michigan, together with John Gustave Beyers and others, charged, under section 5346 of the Revised Statutes of the United States, with having made an assault with dangerous weapons upon one James Downs, the assault having taken place on the steamer *Alaska*, a vessel owned by citizens of the United States, while such vessel was in the Detroit River, out of the jurisdiction of any particular State of the United States and within the territorial limits of the Dominion of Canada, and the said Robert S. Rodgers, and the others indicted with him, having first, after the assault, come into the United States in the eastern district of Michigan.

On the twentieth day of September, in the year of our Lord one thousand eight hundred and eighty-nine, the defendant, Rodgers, was arrested, and on the same day the indictment was, on motion of the United States attorney for the eastern district of Michigan, and by order of the district court for such

district, remitted to the circuit court for such district, and with all proceedings theretofore taken, certified to such circuit court.

On the twenty-third day of September, in the year of our Lord one thousand eight hundred and eighty-nine, the defendant, on being called upon to plead in the circuit court of the United States for the eastern district of Michigan, by permission of the court pleaded in abatement to the jurisdiction of the court, claiming that under section 5346 of the Revised Statutes of the United States the courts of the United States have no jurisdiction of offenses committed in the Detroit River on a vessel of the United States within the territorial limits of the Dominion of Canada.

The United States, by C. P. Black, United States attorney, and Charles T. Wilkins, assistant United States attorney for the eastern district of Michigan, demurred to such plea, and the defendant joined on demurrer.

The matter of the plea of the jurisdiction coming on to be heard in the circuit court of the United States for the eastern district of Michigan, on the third day of October, in the year of our Lord one thousand eight hundred and eighty-nine, before the circuit and district judges, and the defendant being present in court, the said circuit and district judges were divided in opinion on the question:

Whether the courts of the United States have jurisdiction, under section 5346 of the Revised Statutes of the United States, to try a person for an assault, with a dangerous weapon, committed on a vessel belonging to a citizen of the United States, when such vessel is in the Detroit River, out of the jurisdiction of any particular State and within the territorial limits of the Dominion of Canada.

And so, at the request of the defendant and of the United States attorney for this district, the circuit and district judges do hereby at the same term state this point upon which they disagree, and hereby direct the same to be certified under the seal of the circuit court of the United States for the eastern district of Michigan to the Supreme Court of the United States at its next session, for its opinion thereon.

HOWELL E. JACKSON,
Circuit Judge.
HENRY B. BROWN,
District Judge.

THE QUESTION.

The sole question involved in this case, it is submitted, is presented in the paragraph which counsel has taken the liberty to italicize.

STATUTES.

Section 8 of the crimes act of 1790 (1 Stat., 113), is as follows:

And be it (further) enacted, That if any person or persons *shall commit upon the high seas, or in any river, haven, basin or bay, out of the jurisdiction of any particular State, murder or robbery, or any other offense which, if committed within the body of a county, would by the laws of the United States be punishable with death;* or if any captain or mariner of any ship or other vessel shall piratically and feloniously run away with such ship or vessel, or any goods or merchandise to the value of fifty dollars, or yield up such ship or vessel voluntarily to any pirate; or if any seaman shall lay violent hands upon his commander, thereby to hinder and prevent his fighting in defence of his ship or goods committed

> to his trust, or shall make a revolt in the ship, *every such offender shall be deemed, taken, and adjudged to be a pirate and a felon*, and being thereof convicted shall suffer death; *and the trial of crimes committed on the high seas or in any place out of the jurisdiction of any particular State shall be in the district where the offender is apprehended or into which he may first be brought.*

The act of March 3, 1825 (4 Stat., 115) is entitled "An act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes."

Section 22 thereof (p. 121) reads as follows:

> SEC. 22. *And be it further enacted*, That, if any person or persons, *upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin, or bay,* WITHIN THE ADMIRALTY JURISDICTION OF THE UNITED STATES, *and out of the jurisdiction of any particular State, on board any vessel belonging, in whole or in part, to the United States or any citizen or citizens thereof, shall*, with a dangerous weapon, or with intent to kill, rob, steal, or to commit a mayhem, or rape, or to perpetrate any other felony, *commit an assault on another, such person shall, on conviction thereof, be punished* by a fine, not exceeding three thousand dollars, and by imprisonment and confinement to hard labour, not exceeding three years, according to the aggravation of the offense.

This enactment, in substance, appears in the Revised Statutes in the following form:

> SEC. 5346. Every person who, *upon the high seas, or in any arm of the sea, or in any* RIVER, *haven, creek,* BASIN, *or bay,* WITHIN THE ADMIRALTY JURISDICTION OF THE UNITED STATES, *and out of the juris-*

diction of any particular State, on board any vessel belonging in whole or in part to the United States, or any citizen thereof, with a dangerous weapon, or with intent to perpetrate any felony, *commits an assault on another shall be punished* by a fine of not more than three thousand dollars and by imprisonment at hard labor not more than three years.

The statute relating to the place of trial is of manifest importance in this case, viz, R. S.:

SEC. 730. The trial of all offenses committed upon the high seas or elsewhere, out of the jurisdiction of any particular State or district, shall be in the district where the offender is found or into which he is first brought.

POINTS.

I.

THE INDICTMENT, IN TERMS, BRINGS THE DEFENDANT WITHIN THE STRICT LETTER OF THE STATUTE.

The defendant, Robert S. Rodgers, is shown by the indictment to be *a person who, in a river, within the admiralty jurisdiction of the United States, and outside of a particular State, on board of a vessel belonging to citizens of the United States, with a dangerous weapon* (and also with intent to perpetrate a felony), *committed an assault on another.*

The assault was committed on another, one James Downs, in the Detroit River, within United States admiralty jurisdiction, outside of any State of the United States, to wit, in Canadian waters, on a vessel owned by American citizens, Clark and Ashley, with a slungshot, billy, heavy revolver, etc.—a dangerous weapon; therefore, jurisdiction under the statute is explicitly shown.

The word "river" is a sufficient statutory description of the location.

As the legislators of 1825 found the words "*basin*" and "*river*" in the antecedent act, they did not need to employ new terms to designate the lakes and the connecting links; but they did add the very pregnant descriptive words "*within the admiralty jurisdiction of the United States.*" That the legislator may or may not have foreseen how far his work might extend is without much weight.

Few will assert without some hesitation that the framers of the Constitution, intelligent and wise as they were, fully foresaw precisely where the growth and extension of the country and the application of legal rules to new occasions and under new relations would carry the principles which they declared.

The principle or rule was declared and the application was left to await the occasion.

Thus it was also, it is submitted, as to the enactments of 1790 and 1825.

But see the important adverse case of *Ex parte: Byers* (32 F. R., 404).

II.

THE DETROIT RIVER IS NOT ONLY CONSTRUCTIVELY, BUT IN A COMMERCIAL AND A PHYSICAL SENSE, A RIVER EMPTYING INTO THE OCEAN.

This court will, of course, take judicial notice of the geographical facts of the extent and relations of the connected waters extending from the lower St. Lawrence to Lake Superior.

It is said in President Grant's second annual message, 1871 (1 Wharton Int. L., sec. 30, p. 81), that the St. Lawrence—

> constitutes a natural outlet to the ocean for eight States, with an aggregate population of about 17,600,000 inhabitants, and with an aggregate tonnage of 661,367 tons upon the waters which discharge into it.

He also quotes the following passage from Phillimore:

> On the ground that she (Great Britain) possesses both banks of the St. Lawrence, where it disembogues itself into the sea, she denies to the United States the right of navigation, though about one-half of the waters of Lakes Ontario, Erie, Huron, and Superior, and the whole of Lake Michigan, through which the river flows, are property of the United States (p. 83; see also p. 96).

In Wheaton's Int. L., sec. 205, it is said to have been claimed on the part of the United States—

> That if the St. Lawrence were regarded as a strait connecting navigable seas, as it ought properly to be, there would be less controversy. The principle on which the right to navigate straits depends is, that they are accessorial to those seas which they unite, and the right of navigating which is not exclusive, but common to all nations, the right of navigating the seas drawing after it that of passing the straits. The United States and Great Britain have between them the exclusive right of navigating the lakes. The St. Lawrence connects them with the ocean. The right to navigate both (the lakes and the ocean) includes that of passing from one to the other through the natural link.

It is urged that the Detroit River is, in this view of the case, a portion of that navigable water which flows from the mouth of the St. Louis to the Gulf of the St. Lawrence, and is a portion of that continuous navigable flowing stream which empties into the ocean.

III.

THE DETROIT RIVER IS WITHIN THE GENERAL ADMIRALTY JURISDICTION OF THE UNITED STATES.

In the case of *The Thomas Jefferson* (1825) (10 Wheat., 428), this court held that the district court had no admiralty jurisdiction of a suit for wages earned on a voyage from Shippingport, Ky., up the Missouri River, and back, because the voyage "was several hundred miles above the ebb and flow of the tide."

In *Warring* v. *Clarke* (1846) (5 How., 441), admiralty jurisdiction in a case of collision occurring in tide waters on the Mississippi, 95 miles above New Orleans, was upheld.

It was objected that the place of the collision was within the body of a county, and the court overruled the objection.

This case was approved in *New Jersey, &c., Co.* v. *Merchants' Bank* (1847) (6 How., 392).

The decision in the case of *The Propeller Genesse Chief* v. *Fitzhugh*, which followed in 1851 (12 How., 443), declared the doctrine that the admiralty jurisdiction granted to the district courts of the United States under the Constitution extends to the navigable lakes and rivers of the United States without regard to the ebb and flow of the tides of the ocean.

In the same year this court followed the foregoing case in *Fretz* v. *Bull* (12 How., 466), and held that the admiralty jurisdiction of the United States extends to collisions on the River Mississippi above the ebb and flow of the tide.

The narrow doctrine of the case of *The Thomas Jefferson* had now been clearly overruled and discarded, and the admiralty jurisdiction of the national courts had been established upon a basis commensurate with the character of the American inland seas, and of the extensive, valuable, and increasing commerce which they bear.

In 1857 the like rule was adopted where a collision occurred in the body of a county of a State in the Alabama River above the flux and reflux of the tide.

Jackson v. *Magnolia* (20 How., 296).

In 1859 the question again came before this court in *Nelson et al.* v. *Leland et al.* (22 How.,48), where the collision involved occurred on the Yazoo River, more than 200 miles above its mouth, and in the body of the State of Mississippi, and the jurisdiction of the court of admiralty was upheld.

The general rule was firmly established, and has been reasserted and illustrated in *The Propeller Commerce* (1 Black, 574) and other cases.

In the case of the *Eagle*, decided in 1868 (8 Wall., 15), the decision is based upon the doctrine held in the Genesee Chief. See also *Conkling's Treatise* (4th Ed., pp. 254–257; Cooley's notes to *Story's Const.*, sec. 1666; *Henry's Admiralty* (pp. 10–15); *Paschal's Const.* (4th Ed., note 203).

As the courts of the United States have, as to admiralty jurisdictional requirement, substituted public navigable

waters in the stead of tide waters, it follows that the court below had the same jurisdiction of the defendant under the indictment found as would have been the case had the Detroit River been of salt water and subject to the ebb and flow of the tides.

IV.

THE OFFENSE COMMITTED BY THE DEFENDANT WAS IN VIOLATION OF THE FEDERAL STATUTE, AND JURISDICTION TO TRY HIM EXISTED IMMEDIATELY WHEN HE CAME INTO OR WAS FOUND IN THE DISTRICT.

The original criminal jurisdiction of the English courts of admiralty was very broad.

It is said that—

> "it has been held by the courts of criminal law that the criminal jurisdiction of the admiralty court transferred to them by 28 Hen. VIII, c. 15, * * * extended over all offenses committed by British subjects or foreigners on board British ships:
>
> 1. In all great waters frequented by ships.
>
> 2. In creeks, harbors, ports, etc., in foreign countries—and over all persons.
>
> 3. In havens and creeks, and in rivers below bridges in the United Kingdom.
>
> In other words, the common law jurisdiction of the admiralty courts extended over—
>
> 1. British subjects and persons on board British ships everywhere." *Smith's Admiralty* (pp. 5, 11).

It is the the law of all maritime nations that that portion of water covered by a vessel is considered as part of the territory of that particular nation to which the ship belongs.

The reason of this rule applies as strongly to the great international lakes as to the ocean or the Mediterranean.

A crime committed upon a vessel riding upon waters that are tideless and not salt does not differ in any essential quality from a similar crime committed on a tidal stream or near the coast of the high sea.

The rule of jurisdiction as applied in the United States partakes of the breadth of the early English rule as above stated.

> Admiralty and maritime jurisdiction in the United States includes—
>
> 1. Captures made *jure belli* upon certain waters, etc.
>
> 2. Crimes and offenses against the laws of the United States committed upon the same waters. * * *
>
> Paschal's Const. (Note 203.)

It is pointed out in Conkling's Treatise (4th ed., p. 168) that—

> The United States have no unwritten criminal code to which resort can be had as a *source of jurisdiction*. A considerable proportion of these offenses are, in their nature, of admiralty jurisdiction. * * * The Constitution, it is true, extends the judicial power of the United States to all cases of admiralty and maritime jurisdiction, and this plenary grant embraces criminal as well as civil causes.

In Story on the Constitution the general breadth of admiralty jurisdiction in the United States is set forth (par. 1673), but without reference to an exercise of that jurisdiction in connection with the fresh-water lakes.

It is stated (Story, Const., sec. 1673) that the—

> criminal jurisdiction of the admiralty is therefore exclusively vested in the National Government, and may be exercised over such crimes and offenses as Congress may from time to time delegate to the cognizance of the national courts.

See, also, *Abb. U. S. Prac.* (288–292).

It may be admitted that the framers of the Constitution had no thought of the class of waters now under consideration, and that Congress did not have them in view when passing the enactment of 1790, or that of 1825; yet, when those waters became useful and important in the interstate and international commerce, with large populations upon their borders and bearing a vast commerce, and becoming subject to many of the incidents of the waters anciently known as the high seas, they became and were, within the reason and scope, and constructively, within the intent of the Constitution and of the crimes acts.

V.

Counsel for the plaintiff begs to supplement this hastily prepared brief by adding, by way of appendix, excerpts from the valuable brief framed and presented by the counsel appearing for the Government in the court below.

A. X. PARKER,
Assistant Attorney-General.

APRIL 24, 1893.

APPENDIX.

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES
v.
ROBERT S. RODGERS.

Extracts from brief of Mr. C. P. Black, United States attorney, and Mr. Charles T. Wilkins, Assistant United States attorney for the eastern district of Michigan.

There is only one question before the Supreme Court in this cause, that is, has Congress brought the Detroit River within the scope of section 5346 of the Revised Statutes of the United States?

I.

There is no doubt that the section referred to is constitutional, Congress having power to pass it under article III, section 2, of the Constitution (Rev. Stat., p. 24), which declares that the judicial power shall extend to "all cases of admiralty and maritime jurisdiction."

United States vs. *Durkee* (1 McAllister, 196).

United States vs. *Bevans* (3 Wheaton, 388).

Congress has also the power to punish an act on United States vessels in foreign waters, or even on land, under the clause of the Constitution giving power to Congress "to regulate commerce with foreign countries and among the several States."

Gibbons vs. *Ogden* (9 Wheaton, 189).
United States vs. *Combs* (12 Peters, 72).
See also—
United States vs. *Bird* (1 Spr., 299).
United States vs. *Arwo* (19 Wall., 486).
United States vs. *Monel* (13 Amer. Jur., 279).

II.

There is also no doubt that this act of Congress applies to offenses committed on vessels of the United States within the jurisdictional limits of a foreign territory.

American vessels have always been considered as carrying the laws of the United States with them, so far as to make their crews and passengers amenable to those laws wherever they may be.

And the uniform current of authority has always been to the effect that there can be no doubt of the right of the United States to punish all offenses committed on or from their own vessels, and that it is no defense that the crime was committed within the jurisdictional limits of a foreign state.

United States vs. *Pirates* (5 Wheaton, 184).
United States vs. *Palmer* (3 Wheaton, 610).
United States vs. *Keefe* (3 Mason, 475).
United States vs. *Seagrist* (4 Blatch., 420).

Indictment for endeavor to make a mutiny on American vessel in foreign port, Palermo.

Held, that the offense was committed in a place within the admiralty, etc., jurisdiction of the United States, and that the offenders could be tried and punished in the United States circuit court.

An offense committed on an American vessel lying at a place called Humaco, Puerto Rico, for purpose of taking on cargo, is held to have been within the admiralty jurisdiction of the United States.

United States vs. *Turner* (2 N. Y. Leg. Obs., 256).
United States vs. *Roberts* (2 N. Y. Leg. Obs., 99).
United States vs. *Lynch* (D. C., 1688).
United States vs. *Gordon* (5 Blatch., 18).
United States vs. *Pirates* (5 Wheaton, 184).
United States vs. *Bennett* (3 Hughes, 466).
United States vs. *Smith* (3 Wash.).
United States vs. *Ross* (1 Gall., 624).

That crime on waters at seacoast is within the jurisdiction of the United States, although within territorial limits of foreign government (where place is without low-water mark).

The same inference can be drawn from *United States* vs. *Davis* (2 Quinn, 482), which says, where shot was fired from American vessel and killed a man on board foreign schooner in harbor of Society Islands, act was committed on board the schooner, and hence jurisdiction belonged to foreign government, and not to the United States.

Also from *United States* vs. *Imbert* (4 Wash., 702), which says that manslaughter is no offense against the laws of the United States unless committed on the high seas or in a place under the sole jurisdiction of the United States, or on board a vessel belonging to a citizen of the United States on some water within foreign jurisdiction by seaman or passenger upon some other seaman or passenger. If offense is committed within foreign jurisdiction it is essential to prove that the vessel on which it is committed belonged to a citizen or citizens of the United States.

Indictment for assault with dangerous weapon committed on high seas in outer road off Santo Domingo in vessel belonging to citizens of the United States supported by proof in inner road and in port.

United States vs. *Stevens* (4 Wash., 574).

III.

Again, there can be no doubt that Congress has the power to extend such an act to the Great Lakes and their connecting waters.

The statute in question being passed under the clause of the Constitution giving Congress power to legislate as to matters of admiralty and maritime jurisdiction, or under the clause to regulate commerce with foreign nations and among the different States, Congress certainly has the power to legislate under that clause for the Great Lakes and their connecting waters.

The *Eagle* (8 Wall., 15).

Genessee Chief vs. *Fitzhugh* (12 Howard, 449 *et seq.*).

That admiralty jurisdiction of the United States extends to the Lakes and navigable waters connecting them, and is not confined to the high seas.

The decision is directly contrary to the principle of the case of *People* vs. *Tyler* (7 and 8 Mich.), on which the defendant will rely, and on which the district judge bases his opinion, and must govern in this court, for the civil jurisdiction being held to extend to these waters, the criminal jurisdiction in admiralty also exists, as the two are deemed to be coördinate.

United States vs. *Keefe* (3 Mason, 475.)

Moreover, the case of *The People* vs. *Tyler* was where the stroke was given in the waters of Canada, but the crime was not complete by death in the county of Saint Clair. This might well be said not to be within the statute providing for punishment of murder on the high seas, or in a river, etc.

But in case at bar, the crime is complete within the jurisdiction of the United States, and outside any State.

Thus, where the stroke was given in Alexandria, and the death occurred in Maryland, the circuit court for the District of Columbia has no jurisdiction.

United States vs. *Bladen* (1 Cr. C. C., 548).

But see *United States* vs. *Guiteau* (1 Mackey, 418 and 563).

So, where stroke occurred on high seas and death took place on land, the United States court has no jurisdiction:

United States vs. *Magill* (1 Wash., 463).

United States vs. *Wilson* (3 Blatch., 435), in which an offense was committed on the East River. The charge says: "It is no doubt within the competency of Congress to bring all waters subject to Federal jurisdiction within the scope of the criminal jurisprudence," and cites as agreeing in this doctrine the cases of—

United States vs. *Bevans* (3 Wheaton, 336).

United States vs. *Wiltberger* (5 Wheaton, 76).

The same doctrine is enunciated in the *Henry Miller Case* (Brown's Admiralty, p. 156), in which the offense was committed on Lake Erie.

IV.

There being no doubt, therefore, that the statute is constitutional, that it covers offenses on vessels owned in whole or in part by citizens of the United States when in foreign waters, and that Congress has the right to extend the operation of this statute to the Great Lakes and their connecting waters, and the circuit and district judges of the eastern district of Michigan being agreed on these points, the only question to determine in this proceeding is whether Congress has exercised its constitutional power in this behalf and, by this statute, covered offenses committed on a vessel owned by citizens of the United States on the Detroit River, or whether the operation of the statute is confined, as claimed, to rivers, etc., emptying into the sea, and in fact, a part thereof.

Section 5346 provides for the punishment of an assault with a dangerous weapon or with intent to perpetrate a felony on board an American vessel upon the high seas,

or in any arm of the sea, *or in any river, haven, creek, basin or bay within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State.*

This statute must be intended to apply to just such waters as the Great Lakes and their connecting waters.

Congress has particularly mentioned rivers and basins. It can not be said that Congress meant to confine the scope of the statute *to such rivers and basins as* emptied into the sea or were branches thereof for several reasons.

There is nothing in the statute to warrant such a conclusion. The language covers all rivers and other bodies of waters within the admiralty and maritime jurisdiction of the United States, and there are no words in the statute which confine its operation to rivers and basins which empty into the sea. If such were the intent of the statute it would be expressed.

But the same words, river, haven, creek, basin, or bay, appear in many other sections of the crimes act. If these words are construed in this section of the crimes act (Sec. 5346) as confined to rivers, etc., emptying into the sea, or parts of the sea, the same construction must be placed upon them in the other statutes, whenever they occur. In some instances this would result in an absurdity.

For instance, section 5370 provides for the punishment of robbery upon the high seas, or in any open roadstead, or in any haven, basin, or bay, or in any river where the sea ebbs and flows; section 5372 provides punishment for the same crime, upon the high seas, or in any river, harbor, basin or bay out of the jurisdiction of any particular State.

If this latter description is construed as confined to rivers, etc., emptying into the sea what is the reason of the former section? If Congress meant to so confine their meaning why did it not say so in the latter section, as it has done in the former? But if Congress did so mean

to confine the meaning of the latter section, why have we two sections, one following the other, and both punishing the same offense?

Again, if Congress meant to confine the meaning of these words to rivers, etc., emptying into the sea, and into bays, basins, etc., part of the sea, *why, in this very section, 5346, does it mention arm of the sea as well as rivers, etc.?* A basin emptying into the sea is certainly an arm of the sea, and would be included in those words, as the honorable district judge infers in his opinion. Why, then, repeat the meaning in the same section? The statute should be construed so as to give, if possible, force and effect to every clause and word in it.

But if rivers, basins, etc., are construed as confined to such as are arms of the sea, this plain rule of statutory construction is violated, and no force or effect or meaning is given to the words river, creek, or basin.

But the honorable court says, in *People* vs. *Tyler* (7 Mich., 161, etc.), that this act should bear the same construction as it bore when it originally passed in 1790. The fact is that, at that time, the rivers, such as the river St. Lawrence and the river Niagara, were of more importance than the lakes, and it would be but natural that Congress should specify the rivers, and only mention the lakes by some term of indefinate extent, as the term "basin." But is there any reason that can be given that warrants the court in saying that Congress legislated for the river St. Lawrence and not for the Detroit River? Certainly nothing in the statute warrants such a conclusion. And it would scarcely seem that the court is justified in giving the protection of this statute to the river St. Lawrence, and then interpolating words to take that same protection away from the Detroit River.

Moreover, at the time this act was passed the nature and extent of these Great Lakes were not known. They were looked upon as indefinite bodies of water. *The*

term "lake," as then commonly understood, was applied to such bodies of water as the lakes of England and continental Europe. These lakes were such as the smaller lakes in this country, and so Congress undoubtedly understood the term. It is but natural, then, that having provided for the high seas and arms of the sea, and for rivers and creeks, etc., Congress, when it wished to cover all other bodies of water within the admiralty jurisdiction of the United States, *should not use the term "lakes," but, desirous of including these indefinite bodies of water in the Northwest, should take a more indefinite term—a term which would include these bodies of water, whatever their nature and extent—and should choose the term it has used, "basin."*

Having once brought them within the jurisdiction of the United States courts, and within the scope of this statute, it was entirely unnecessary, when the act was amended in 1825, to say anything further concerning them than was said originally.

This reasoning is only fortified by the principle that the amended act should bear the same construction that it bore when originally passed.

In the *Eagle* (8 Wallace, 15), the Supreme Court, in effect, says that the act of 1845, extending the admiralty jurisdiction of the United States to the Great Lakes in certain cases, was unnecessary, as those waters came within that jurisdiction without any such act, and yet in early days the admiralty jurisdiction was uniformly treated as confined to waters where the tide ebbs and flows.

Congress has made it a punishable offense in any place within the exclusive jurisdiction of the United States to commit a simple assault, but it has not made it an offense to commit an assault with a dangerous weapon. This omission, however, would not warrant the court in holding the former offense unpunishable. In the same manner, even if it be held that Congress has not, by section 5346, punished offenses on the Great Lakes, it has in this

section expressly punished offenses on the rivers, and neglect to legislate for the lakes does not authorize the court to nullify the legislation for the rivers. The court can not say that as Congress has not legislated for the lakes, as it should have done, no effect will be given to its legislation for rivers.

Certainly the true intent of Congress in passing this statute was to protect American vessels wherever they might be out of the protection of the laws of any of the States.

If the court follows the intent of the statute and adopts the sense of the words which promotes the plain policy and objects of Congress, it must construe the word "basin" as applying to these lakes, and certainly the word "river" as applying to the Detroit River.

In *United States* vs. *Winn* (3 Sumner, 211), Mr. Justice Story construed the third section of the statute of 1835 which provides that "*if any master or other officer* of any American ship or vessel * * * shall * * * beat, wound, or imprison any one or more of the *crew* of the ship of said vessel * * * every such person so offending shall * * * be punished," etc., and held, although the words "any master or other officer" appeared in the statute, that a mate was included in the word "crew," and that a master was liable under the statute for beating his chief officer. The case was within the words and the mischief of the statute, and the learned justice held that the court should not resort to the narrowest of the words instead of the broader sense, when in each case there was the same mischief to be suppressed, and the same public policy in the protection of the commercial interests of the country.

United States vs. *Winn* (3 Sumner, 209 *et seq.*).

In *United States* vs. *Sweeney* (1 Bissell, 309, 312), which was an action against the master of a vessel navigating Lake Michigan for the recovery of a penalty under the act

of February 18, 1793, for failure to deliver a manifest of the cargo of his vessel, the court, following this established rule of construction, says that Lake Michigan is included within the description in the statute, although the words in the statute descriptive of place are "on the seacoast or on a navigable river," and that a vessel navigating from Chicago to Milwaukee is liable for a failure to comply with the provisions of the act. Mr. Justice Miller, in announcing the decision of the court, says that whenever a vessel was enrolled or licensed under the act in question "it became under the protection of the laws of the United States, and bound to observe the revenue laws. A vessel arriving at the port of Detroit, or any other point in a navigable river connecting the lakes would come literally under the requirements of the act of February 18, 1793. Lake Michigan is not a navigable river and I do not think that such a strict construction should be put on the act as contended for on behalf of the defendant. This is a suit for the recovery of a penalty. * * * But, although this is an action for a penalty, yet the intention of the legislature must govern; and the act should not be construed so strictly as to defeat the obvious intention of the legislature."

Exactly the same argument applies in the case at bar. The intent of Congress is plain. The case is within the meaning of the words of the statute, and the same public policy which applies that statute to the rivers, etc., emptying into the sea would apply it to the Detroit River and to the Great Lakes.

The court is undoubtedly bound to construe penal statutes strictly, but it is bound to interpret them according to the manifest import of the words, and to hold all cases which are within the words and the mischiefs to be within the remedial influence of the statute.

The *Industry* (1 Gall., 117).

United States vs. *Hartnell* (6 Wall., 385, 396).

United States vs. *Rhodes* (1 Abbott, U. S. R., 37).

Schooner *Bolina* (1 Gall., 83).
The Cherokee Tobacco (11 Wall., 620).
United States vs. *Amedy* (11 Wheaton, 393, 412).

Every consideration should lead the court to apply this rule to the case at bar. The broader meaning of the section is its natural meaning, and words should be construed according to their ordinary signification, unless there is some strong reason for giving them another construction.

United States vs. *Palmer* (3 Wheaton, 610).

Even if the narrowest meaning of the words of the statute be taken, the Detroit River must be included in that meaning, and the case at bar comes within the statute.

If Congress had intended to limit the meaning of this section, it would have expressed such limited meaning as it has done in section 5372, and has not done in this section, 5346.

The word "basin" clearly applies to such bodies of water as our Great Lakes. If confined to mean branches of the sea, the word would be unnecessary, as it would be included in the other words "arm of the sea."

The only dicta there are on this point are all in favor of the construction claimed by the United States, and there are no decisions to the contrary.

Henry Miller's Case (Brown's Admiralty, p 9).
United States vs. *Wilson* (3 Blatch., 435).
United States vs. *Sweeney* (1 Biss., 309).

C. P. BLACK,
United States Attorney for the Eastern District of Michigan.
C. T. WILKINS,
Assistant United States Attorney for the Eastern District of Michigan.